Bethlehem Steel Corporation, Employer-Petitioner and United Steelworkers of America, AFL-CIO, CLC. Case 5-UC-336

September 27, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX, LIEBMAN, HURTGEN, AND BRAME

On May 22, 1996, the Regional Director for Region 5 issued a Decision and Order Dismissing Petition, finding that the instant petition, which seeks to exclude the product marketing representatives, product application consultant, and secretaries (product marketing employees) from the existing unit, was untimely. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision. The Union filed an opposition brief.

The Employer's request for review of the Regional Director's Decision and Order Dismissing Petition is granted. Having carefully considered the matter, we have decided to reverse the Regional Director's finding that the petition is untimely, to reinstate the petition, and to remand the case to the Regional Director for a determination on the merits.

The Union and Employer have been parties to successive collective-bargaining agreements covering a unit of office and technical employees at the Employer's Sparrows Point, Maryland facility. The most recent contract was effective from August 1, 1993, to August 1, 1999. On January 18, 1993, the Employer issued a press release announcing, inter alia, its plan to relocate certain job functions performed by product marketing employees from its Bethlehem, Pennsylvania home office to its Sparrows Point, Maryland facility. The record establishes that there was discussion in the June/July 1993 contract negotiations regarding unit placement of the product marketing employees but that the parties never reached agreement about their placement. The contract apparently was executed in August 1993. In August through November 1993, the Employer implemented its plan, causing some product marketing job functions and employees to relocate from the Bethlehem facility to Sparrows Point. In November 1993, the Union filed grievances asserting that the product

marketing employees were performing unit work and seeking their inclusion in the unit. On July 31, 1995, the Employer filed the instant petition seeking to clarify the unit specifically to exclude the product marketing employees. In August 1995, the Union requested arbitration of the grievances concerning the product marketing representatives and secretaries.

The Regional Director found that the existing contract clearly defined the scope of the unit and that the product marketing employees were not included. The Regional Director, citing *Wallace-Murray Corp.*, 192 NLRB 1090 (1971), therefore dismissed the petition as untimely, because it was filed during the term of the contract and no party had reserved the right to file a UC petition after contract ratification.² The Regional Director noted that the Employer delayed the filing of the instant petition until 2 years after contract ratification, even though the Union filed related grievances in November 1993, putting the Employer on notice that the product marketing employees would continue to be a matter of dispute.

Contrary to the Regional Director, we find that this petition was timely filed and therefore should not have been dismissed. As the Regional Director correctly noted, the Board will not normally entertain a petition for unit clarification during the term of a contract to modify the composition of a unit that is clearly defined in the collectivebargaining agreement. Safeway Stores, Inc., 216 NLRB 819 (1975). However, unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established classification. Union Electric Co., 217 NLRB 666, 667 (1975). In the instant case, we find that the petition does not seek to modify the bargaining unit, but rather seeks to have the Board determine the placement of the classifications that had not yet been relocated when negotiations for a new contract were completed, and therefore did not come into existence at Sparrows Point until after the contract was executed.³ We note further that the placement of these newly located employees was not specifically covered in the parties' collective-bargaining agreement, and has been in dispute since their relocation. The Union's filing of a grievance in November 1993 specifically seeking the inclusion of the product marketing employees in the unit indicated that the status of these classifications was in dispute and that the Union was not acquiescing in their exclusion from the unit. The Union thereafter made known its intention to file for arbitration of these grievances, at which time the Employer filed the instant petition.

¹ The unit description in the most recent contract reads:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the Employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

² Wallace-Murray involved a petition to clarify an existing unit to exclude guards during the midterm of the bargaining agreement. Noting that the bargaining unit was "clearly define[d]" in the agreement to include the guards, the Board held that such clarification would "be disruptive of a bargaining relationship" and dismissed the petition as untimely but without prejudice to filing a clarification petition at an appropriate time.

³ Before the actual transfer of the product marketing employees, it is questionable whether the Board would have entertained a UC petition.

Because the petition seeks to have the Board determine the placement of employee classifications which are not expressly covered in the contract, which did not exist at Sparrows Point at the time the parties executed their contract, and which have been in dispute since they came into being at that location, we find that it would not be disruptive of the collective-bargaining relationship to entertain the clarification petition at this time. See *Safeway Stores, Inc.*, supra. Accordingly, we reverse the Regional Director's decision dismissing the petition as untimely, reinstate the petition, and remand the case to the Regional Director for a determination on the merits.